

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(
(Richmond, Fredericksburg and Potomac Railroad Company

STATEMENT OF CLAIM:

1. That under the current agreement, Sheet Metal Worker Leroy T. Akers was unjustly discharged from service on June 2, 1989.

2. That accordingly the carrier be required to reinstate the aforementioned employee to service with all rights unimpaired, including seniority, vacation, health and welfare benefits, life insurance, and that he be made whole for all time lost.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, a pipefitter, who was scheduled to work from 7:00 A.M. to 3:00 P.M. on April 3, 1989, did not protect his assignment. An Investigation was held on May 17, 1989, and on June 2, 1989, Claimant was discharged from service.

Claimant admitted he did not protect his assignment on April 3. A friend of the Claimant called in at 8:15 A.M. to mark him off because of a death in the family, allegedly his goddaughter. Claimant, who indicated a car accident occurred at 2:30 A.M. on April 3, gave no explanation as to why he was not able to call the Carrier himself prior to 7:00 A.M. on April 3. During the Investigation Claimant indicated he had police reports to substantiate the fact a car accident resulting in death to his goddaughter actually occurred. The Hearing Officer agreed to hold the transcript open in order for Claimant to bring in the reports. Claimant did not bring in the reports the following day or at any time thereafter.

We have reviewed the transcript of the Investigation and find that it was conducted in a fair and impartial manner. No exceptions were taken by Claimant or his Representative.

Claimant's explanation as to why he did not protect his assignment on April 3 is not creditable. If, as Claimant alleges, he was not able to protect his assignment because of an accident and death of his goddaughter he should have been able to produce reports supporting his story. Claimant while given the opportunity to produce the reports, failed to do so. We therefore, find him guilty as charged.

The Organization argues that the discipline was unjust and excessive in view of the fact Claimant missed only one day at work.

Carrier in determining the amount of discipline to be assessed reviewed Claimant's past record. Beginning in February 1983, through October 1988, Claimant was reprimanded twice for reporting late or not reporting; he was suspended four times (total of 10 days) for failing to protect his assignment. On December 29, 1988, Carrier's Master Mechanic wrote to Claimant and reviewed his past record and warned him that future discipline would be progressively more severe and could include dismissal from service. On February 15, 1989, Claimant was suspended 10 days for failing to protect his assignment on February 3, 1989. On March 22, 1989 he was suspended 20 days for failing to protect his assignment on February 17, 1989.

In view of Claimant's past record of failing to protect his assignment and his failure to heed repeated warnings we find the discipline imposed in this case was not arbitrary, excessive or unreasonable.

The Organization also argues that Carrier should be barred from using Claimant's past record because it was not made a part of the transcript. We find no merit to this argument. We agree with what was said in Second Division Award 6710, i.e.,:

"It is immaterial that Claimant's prior work record was not entered at the investigation hearing. Carrier still has the right to consider that record for the purpose of determining the penalty."

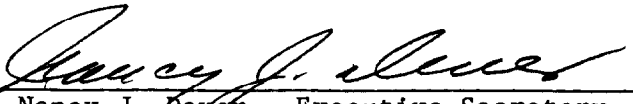
A W A R D

Claim denied.

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Award No. 11899
Docket No. 11832
90-2-89-3-135

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1990.